HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.39 of 2007

Between:

Dasari Ganga Reddy …Appellant

And

Government of Andhra Pradesh,
represented by its Principal Secretary,
Panchayat Raj and Rural Development,
Secretariat, Hyderabad and others. …Respondents.

:: J U D G M E N T ::

Counsel for the appellant : Sri N.Sridhar Reddy for
Sri K.Raghuveer Reddy

Counsel for the respondents : Government Pleader for
Panchayat
Raj.

19th January, 2007

Per G.S. SINGHVI, C.J.

This appeal is directed against order dated 14-12-2006 passed

by the learned Single Judge in Writ Petition No.18812 of 2006, whereby he declined the appellant's prayer for quashing proceedings dated 15-7-2006 and for issue of a mandamus to District Collector (Panchayat Raj), Nizamabad (respondent No.2) to consider his application for extension of lease in terms of resolution dated 22-12-2004 passed by District Level Sand Committee, Nizamabad (respondent No.4), but gave him liberty to apply for refund of the lease amount for the balance period of lease.

Background Facts:

i) In pursuance of tender notice dated 6-9-2000 issued by the competent authority for auction of sand reaches at Kaligote Village in Nizamabad District, the appellant gave highest bid of Rs.2,40,100/-. His bid was accepted and lease for excavation of sand was granted to him for a period of two years commencing from 1-10-2000. However, he could not continue the quarrying operations because PWG Naxals are said to have blasted his lorries in December, 2000. He then approached respondent No.2, who directed discontinuance of the quarrying operations in view of the naxal problem.

ii) After about two years, the petitioner filed Writ Petition No.23298 of 2003 for issue of a direction to the respondents to decide his representation for extension of the lease period. The same was dismissed by the learned Single Judge on 5-11-2003 by recording the following order:

> "The inspiration for the petitioner to file the present writ petition appears to be orders passed by this Court in W.P.No.21728 of 2003, dt.16-10-2003 and W.P.No.22764 of 2003, dt.29-10-2003. In the said writ petitions, the petitioners therein were prevented from operation of the sand quarry for the reasons beyond their control, as such their representations were directed to be considered for extension of lease or for proportionate refund of the lease amount. Admittedly, in the

present case, the lease was expired on 30th September, 2002 and after expiry of lease the petitioner has made a representation on 3-12-2002 and has not chosen to move this Court immediately. The present writ petition is filed only on 3-11-2003.

In the circumstances, the writ petition is liable to be dismissed on the ground of laches and no relief can be granted. Accordingly, the writ petition is dismissed."

iii) Writ Appeal No.2031 of 2003 preferred by the appellant was dismissed by the Division Bench in the following terms:

"By the impugned order, writ petition was dismissed on the ground that the appellant was not entitled to any relief due to laches. Appellant was lessee to operate sand quarry. Lease expired on 30-9-2002. After expiry, a representation was made by the appellant on 3-12-2002. Since it was not considered, writ petition was filed on 3-11-2002. Prayer made in the writ petition was for extension of the lease period. When lease had already expired on 30-9-2002, there could be no question of extension of lease period in an application moved subsequently after the expiry of the period of lease. Extension of lease could be sought only during the subsistence of lease but not after the period of lease has expired. As such, learned Single Judge is justified in dismissing the writ petition.

Learned counsel for the appellant contends that appellant may be granted liberty to apply for refund of excess lease amount for the duration for which appellant could not work on the quarry. No permission would be required to making such representation since no such claim is made in the writ petition. Writ Appeal is dismissed."

iv) After dismissal of the writ petition and writ appeal, the appellant represented to respondent No.4 for extension of lease by contending that he could not undertake quarrying of sand due to reasons beyond his control. Respondent No.4 considered his request and passed resolution dated 22-12-2004, the relevant portions of which read as

under:

> "To discuss about the report of the Deputy Director, Mines & Geology Department, Nizamabad.
>
> No sand should be quarried in this Mandal since it comes under category of 1 to 3 out of 36 Mandals in 33 Mandals. Since in the remaining 3 Mandals there are no sand quarries, there is no sand for construction. By virtue of this, no sand could come for constructions from all the places of the District. Therefore, it is an impediment for constructions. Therefore, once it is resolved to request the Director, Mines & Geology Department to resurvey and give a report. Since there is possibility of using sand available in category 1 to category 3, it is resolved to use the same."

(v) It is borne out from the record that the Deputy Director of Ground Water Department had earlier submitted report against the quarrying of sand on the ground that the area had been over-exploited from the point of view of availability of water. After the passing of resolution dated 22-12-2004 by respondent No.4, the Deputy Director concerned again surveyed the area and submitted report dated 14-3-2005 with the recommendation that sand quarrying should not be done in the area. Thereafter, the appellant made representation dated 18-11-2005 for implementation of resolution dated 22-12-2004 by stating that there was excess rainfall in the area. The matter was once again referred to the Deputy Director of Ground Water Department, who submitted report dated 6-3-2006 that even though the area was over-exploited, sand quarrying could be done for local use in the villages / towns bordering the stream. Thereafter, the matter was referred to respondent No.2, who, in turn, forwarded the same to the State Government. The latter rejected the appellant's request. The decision of the State Government was conveyed to respondent No.2 vide Memo dated 15-7-2006, the extract of which is reproduced below:

> "The attention of the District Collector (PW), Nizamabad

District is invited to the reference cited and he is informed that the proposal has been examined with reference to the report of the Ground Water Department and the rules issued in G.O.Ms.No.1, Industries & Commerce Department, dt.1-1-2001 and it is found that there are no valid reasons to consider the request of the lease holder namely Sri D. Ganga Reddy to accord permission for the balance period. Hence, the proposal is hereby rejected."

The appellant challenged the decision contained in the aforementioned memo by contending that the State Government committed a grave illegality by refusing to entertain his prayer for extension of lease despite the fact that he was prevented from quarrying sand during the lease period. He also pleaded that in view of the unanimous resolution passed by respondent No.4 and report dated 6-3-2006 submitted by the Deputy Director of Ground Water Department, the State Government is duty bound to extend his lease period.

The learned Single Judge, after noticing the factual matrix of the case, the orders passed in Writ Petition No.23298 of 2003 and Writ Appeal No.2031 of 2003, the reports of the Deputy Director, Ground Water Department, the provisions of the Andhra Pradesh Water, Land and Trees Act, 2002 (for short, 'the 2002 Act') held that in view of the order of the Division Bench in Writ Appeal No.2031 of 2003, there was no justification to allow the petitioner to undertake quarrying operations much after expiry of the lease period. The learned Single Judge noted that by virtue of the provisions contained in the Andhra Pradesh Water, Land and Trees Act, 2002 (for short, 'the 2002 Act'), over exploited villages are banned for sand mining and held that the appellant can represent for refund of the lease money for the period during which he could not undertake quarrying operations.

Sri N.Sridhar Reddy, learned counsel for the appellant argued

that the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 are not applicable in the matter of grant of lease for quarrying of sand and, therefore, the decision taken by the State Government not to approve the recommendations made by respondent No.4 is liable to be invalidated. He submitted that even as per the provisions of the 2002 Act, sand mining is permitted for local use in the villages or towns bordering the stream and, therefore, the State Government should have granted permission to the appellant to undertake quarrying operations for the remaining period of lease.

In our opinion, there is no merit in the arguments of the learned counsel and the appeal is liable to be dismissed summarily. Undisputedly, the writ petition and writ appeal filed by the appellant with the complaint that the respondents have not considered his representation for extension of lease were dismissed by the learned Single Judge and the Division Bench and those orders have become final. A perusal of the judgment of Writ Appeal No.2031 of 2003 shows that the Division Bench had unequivocally rejected the appellant's prayer for being allowed to undertake quarrying operations by observing that after expiry of the lease period, there can be no question of permitting him to undertake sand quarrying. Therefore, in the garb of challenging the government's decision not to approve resolution dated 22-12-2004 passed by respondent No.4, the appellant cannot seek a direction for being allowed to undertake the quarrying operations. In our opinion, the appellant should consider himself lucky that while declining his prayer for grant of permission to carry on the quarrying operations, the learned Single Judge gave him liberty to approach respondent No.4 for refund of the amount of lease. His alternative prayer could have been rejected by invoking the principles underlying Order 2, Rule 2 of the Code of Civil Procedure. However, as the order

of the learned Single Judge has not been challenged by the respondents, we decline to make any comment.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.59 of 2007 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, C.J.

19th January, 2007

C.V.NAGARJUNA REDDY, J.

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